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No. 00-1916

In The

Supreme Court of the United States

TIMOTHY WALTON,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Tennessee

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Petitioner Timothy Walton respectfully submits this reply brief to respond to Respondent State of Tennessee's assertion in its opposition that there is no "final judgment or decree" pursuant to 28 U.S.C. § 1257.

I. PETITIONER TIMOTHY WALTON IS SEEKING REVIEW OF A FINAL JUDGMENT OR DECREE PURSUANT TO 28 U.S.C. § 1257

A. Mr. Walton's Sentence, Following A Conditional Guilty Plea, Constitutes A Final Judgment Under The Court's Traditional, Pragmatic Rule Of Finality

Mr. Walton's sentence, imposed following a conditional plea of guilty, satisfies the finality rule that this Court has traditionally applied in criminal cases. In a criminal prosecution, finality generally "is defined by a judgment of conviction and the imposition of a sentence." *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 54 (1989). "Final judgment in a criminal case means sentence. The sentence is the judgment." *Berman v. United States*, 302 U.S. 211, 212 (1937). Although Mr. Walton was not convicted after a trial, his case has obtained the requisite finality because he pleaded guilty under Tennessee law and a sentence was imposed. (App. 8). Specifically, pursuant to Rule 37(b)(2)(i) of the Tennessee Rules of Criminal Procedure, Mr. Walton entered a standard plea agreement but was allowed to reserve with the consent of the State and the trial court the right to appeal a certified question of law regarding the denial of his motion to suppress that was dispositive of the case. (App. 8, 41).[1]

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[1] Rule 37(b)(2)(i) states that an "appeal lies from any order or judgment in a criminal proceeding where the law provides

For purposes of a final judgment, a plea of guilty is no different than a conviction after trial. "A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilt and a lawful sentence." *United States v. Broce*, 488 U.S. 563, 569 (1989). Likewise, a conditional plea, since it results in a conviction and sentence, "is as final as any conviction at trial that might be reversed on direct appeal." Note, *Conditional Guilty Pleas*, 93 Harv. L. Rev. 564, 574-75 (Jan. 1980). Acceptance of a conditional plea means that the defendant is adjudicated guilty but does not waive his right to challenge on appeal certain dispositive legal issues. Thus, Mr. Walton is no less subject to being incarcerated as a result of his sentence than if the sentence had been imposed after a trial and conviction. He stands as a convicted felon and is subject to all the disabilities flowing from such a judgment.

That the Tennessee Supreme Court remanded for a possible new trial is of no significance. The State cannot dispute that a conviction and sentence *after trial* would be a final judgment pursuant to 28 U.S.C. § 1257, even if the Tennessee Supreme Court ultimately reversed in part and remanded for a new trial. The same conclusion applies to Mr. Walton's case. His conviction and sentence have the requisite finality, even though they resulted from a conditional plea and not a trial. The Tennessee Supreme Court's remand of the case to the trial court did not

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for such appeal, and from any judgment of conviction: . . . upon a plea of guilty or nolo contendere if: . . . defendant entered into a plea agreement under Rule 11(e) but explicitly reserved with the consent of the State and of the court the right to appeal a certified question of law *that is dispositive of the case.*" (emphasis added).

vitiate the finality of Mr. Walton's conviction and sentence, just as it would not vitiate the finality of a conviction and sentence after trial. Thus, this Court has no jurisdictional impediment to granting Mr. Walton's Petition, which raises an important question of federal law that has not been, but should be, settled by this Court. Sup. Ct. R. 10(c).

This Court's decision in *Lefkowitz v. Newsome*, 420 U.S. 283 (1975), is directly on point. In that case, the defendant entered a conditional plea of guilty and was sentenced on drug charges under New York law, which, like Tennessee, allowed a defendant to plead guilty but reserve the right to challenge on appeal the denial of his motion to suppress based on constitutional grounds. *Id.* at 284-85. In the course of deciding whether the defendant could raise his constitutional issues through the habeas corpus process, the Court addressed New York's conditional plea provision and the defendant's direct appeal rights. *Id.* at 289-93. In particular, the Court concluded that New York's conditional plea provision preserved the defendant's direct appeal rights, noting that "there is no practical difference in terms of appellate review between going to trial and pleading guilty." *Id.* at 289. The Court stated:

> The guilty plea operates simply as a procedure by which the constitutional issues can be litigated without the necessity of going through the time and effort of conducting a trial, the result of which is foreordained if the constitutional claim is invalid. The plea is entered with the clear understanding and expectation by the State, the defendant, and the courts that it will not foreclose judicial review of the merits of the alleged constitutional violations.

Id. at 289-90. The Court further concluded that the defendant's direct appeal rights based upon a conditional guilty plea would include this Court's review by certiorari, stating:

> The petitioner concedes that this review ultimately includes the certiorari or appellate jurisdiction of this Court. Indeed, in *Sibron v. New York*, 392 U.S. 40, 20 L.Ed.2d 917, 88 S.Ct. 1889, we reversed a state court conviction on the ground that the appellant's motion to suppress evidence should have been granted, notwithstanding the fact that the appellant had pleaded guilty and pursued his appeal under § 813-c. *See id.*, at 45 n. 2, 20 L.Ed.2d 917. If Newsome's guilty plea is not a sufficient "break in the chain of events [that] preceded it" to prevent review of his constitutional claims in this Court, then a fortiori the plea cannot rationally foreclose resort to federal habeas relief.

Id. at 290 n.6.

Likewise, in this case, Mr. Walton's conditional plea of guilty and his sentence had all the elements of finality that this Court has required pursuant to 28 U.S.C. § 1257. The conditional guilty plea and sentence were final in all respects and merely operated as a procedure by which the constitutional issues could be litigated without the necessity of going through the time and effort of a trial. The plea is entered with the clear understanding and expectation by the State, the defendant and the state court that it will not foreclose judicial review of the merits of the alleged constitutional violations, whether by direct appeal or certiorari, and that review will be available as if a conviction had occurred after trial. The Tennessee Supreme Court's decision to give Mr. Walton an opportunity for a trial is no different had he been convicted and given a chance for a retrial. "The conditional

plea results in a judgment as final as any that might be reversed on appeal, necessitating remand and retrial." Note, *supra* p. 2, at 572.

The State's proposed rule would have the undesirable effect of requiring Mr. Walton to seek direct appellate review twice in the state courts – once after entry of a conditional guilty plea and again after a trial itself – in order to preserve his federal constitutional issues for this Court's review. In this case, the State wants to compel Mr. Walton to endure a trial and, if convicted, raise the same constitutional issues in the state courts before his case becomes "final" for purposes of 28 U.S.C. § 1257. Such a proposed rule would not only deprive him of a federal forum on his direct appeal despite the fact that he has pleaded guilty and been sentenced, but would "frustrate the State's policy in providing for post-guilty plea appellate review of pretrial motions to suppress" that are dispositive of the case. *Lefkowitz*, 420 U.S. at 293. In Tennessee, the purpose of the conditional plea device, as noted by the Advisory Commission comments to Tennessee Rule of Criminal Procedure 37(b)(2)(i), is to "avoid the necessity for many trials." Thus, "the justifications for the finality doctrine – efficiency, judicial restraint, and federalism, would be ill-served by another round of litigation on an issue that has been authoritatively decided by the highest state court." *Pennsylvania v. Ritchie*, 480 U.S. 39, 48 n.7 (1987) (citation omitted).

This Court in *Lefkowitz* recognized that the conditional plea process serves the commendable purpose of encouraging defendants to enter conditional pleas, rather than to proceed to trial, in order "to relieve the problem of congested criminal trial calendars in a manner that does not diminish the opportunity for the assertion of rights guaranteed by the Constitution." *Lefkowitz*, 420

U.S. at 293. The Court's discussion regarding New York's procedure is equally applicable to Mr. Walton's case:

> Many defendants recognize that they cannot prevail at trial unless they succeed in suppressing either evidence seized by the police or an allegedly involuntary confession. Such defendants in States with the generally prevailing rule of finality of guilty pleas will often insist on proceeding to trial for the sole purpose of preserving their claims of illegal seizures or involuntary confessions for potential vindication on direct appellate review or in collateral proceedings. Recognizing the completely unnecessary waste of time and energy consumed in such trials, New York has chosen to discourage them by creating a procedure which permits a defendant to obtain appellate review of certain pretrial constitutional claims without imposing on the State the burden of going to trial.

Id. at 292-93. It is safe to predict, as did this Court in *Lefkowitz*, that limiting this Court's review to convictions *after trial* would dissuade defendants from entering conditional guilty pleas. *Id.* at 293. Instead, defendants would insist on a trial at the outset solely to preserve the right to a federal forum on direct appeal in which to litigate their constitutional claims. *Id.* This Court should reject the State's proposed rule as contrary to the purpose of conditional pleas and as inconsistent with the pragmatic approach the Court has taken to finality questions. *Ritchie*, 480 U.S. at 50 n.8.

B. Mr. Walton's Sentence, Following A Conditional Guilty Plea, Is Also A Final Judgment Under *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975)

Alternatively, Mr. Walton's sentence, following his conditional guilty plea, falls within the category of final

judgments recognized in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), even though there is a possibility of a trial on remand. In *Cox*, this Court "outlined four circumstances in which adjudication of a federal issue in a case by the highest available state court has been reviewed in this Court notwithstanding the prospect of some further state-court proceedings." *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 306 (1989); *Cox*, 420 U.S. at 479-83.

This case falls into the first of the four *Cox* categories. The first category includes those cases in which "there are further proceedings – even entire trials – yet to occur in the state courts but where for one reason or another the federal issue is conclusive or the outcome of further proceedings preordained." *Cox*, 420 U.S. at 479. In this case, the federal constitutional issue Mr. Walton seeks to raise in this Court arising from *Miranda v. Arizona*, 384 U.S. 436 (1966), is "conclusive" because, if it is decided in his favor, it will result in the end of his criminal case and dismissal of the charges against him. *See* Tenn. R. Crim. P. 37(b)(2)(i) (permitting right to appeal after entry of conditional guilty plea only when the State and the court agree that the certified question of law is dispositive of the case); *State v. Preston*, 759 S.W.2d 647, 650-51 (Tenn. 1988) (same). When Mr. Walton had succeeded completely in his appeal to the Tennessee Court of Criminal Appeals, the charges against him were ordered to be dismissed. (App. 8). Indeed, this Court has been presented with the Tennessee Supreme Court's last word on the *Miranda* issue raised in the Petition for Writ of Certiorari. *See Duquesne Light Co.*, 488 U.S. at 307.

Moreover, even though Mr. Walton has been accorded the option to withdraw his plea and request a

trial, the "outcome of further proceedings [are] preordained." *Cox*, 420 U.S. at 479. The "option" of withdrawing that plea is no option at all; it is an illusory remedy since the State now comes armed with a license from the Tennessee Supreme Court to use at trial the very nontestimonial evidence which led him to plead guilty in the first place. In response, Mr. Walton will have no choice but to assert his sole constitutional defense to that evidence raised in his Petition and thus to the charges themselves. Such a trial would be " 'no more than a few formal gestures leading inexorably towards a conviction' " and then another appeal to the Tennessee Supreme Court for it "formally to repeat its rejection of [Mr. Walton's] constitutional contentions whereupon the case could then once more wind its weary way back to [this Court] as a judgment unquestionably final and appealable." *Mills v. Alabama*, 384 U.S. 214, 217 (1966). In such circumstances, this Court has not hesitated to find a final judgment. *Id.*

Even assuming, *arguendo*, that the outcome of Mr. Walton's trial would not be a foregone conclusion, the fourth *Cox* category would then be applicable. The fourth *Cox* category includes those cases where:

> the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by this Court, and where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state proceedings still to come.

Cox, 420 U.S. at 482-83. In these circumstances, "if refusal immediately to review the state-court decision might seriously erode federal policy, the Court has entertained and decided the federal issue, which itself has been finally determined by the state courts for purposes of the state litigation." *Id.*

Even if this Court assumes Mr. Walton could prevail on his non-federal claims, thus rendering unnecessary this Court's review of the federal issue, it is clear that the Tennessee Supreme Court's decision has "finally decided" the *Miranda* issue raised in the Petition, and reversal on that issue "would be preclusive of any further litigation on the relevant cause of action" as the charges would be dismissed. (App. 8). Moreover, refusal immediately to review the Tennessee Supreme Court's decision "might seriously erode federal policy" of applying the poisonous tree doctrine to constitutional violations in order to deter the police from committing such misconduct. *Murray v. United States*, 487 U.S. 533, 536-37 (1988); *Nix v. Williams*, 467 U.S. 431, 442-43 (1984); *Wong Sun v. United States*, 371 U.S. 471, 488 (1963); *Nardone v. United States*, 308 U.S. 338, 341 (1939).

The issue in this case is unlike those considered last term in *Florida v. Thomas*, 121 S. Ct. 1905, 1910 (2001), where the Court ruled in a criminal case raising a suppression issue that the fourth *Cox* category was inapplicable because the State could "make no claim of serious erosion of federal policy that is not common to all run-of-the-mine decisions suppressing evidence in criminal trials." In *Thomas*, there was no federal policy at issue because the Court was merely considering the application of *New York v. Belton*, 453 U.S. 454 (1981), which established a bright-line rule permitting a police officer after arresting the occupant of a car to search the passenger

compartment, to a different factual scenario – where the officer had made the arrest while the defendant was outside the vehicle. *Thomas*, 121 S. Ct. at 1908. Here, by contrast, Mr. Walton is not simply seeking review of an established constitutional ruling to a different factual scenario. Rather, he is seeking this Court's adjudication of an overarching principle of law – whether the protections afforded by the poisonous tree doctrine apply to the non-testimonial fruits of a *Miranda* violation. In this respect, his Petition implicates serious federal policy concerning the "legitimacy of the law enforcement practices of several States, as well as the Federal Government." *Fort Wayne Books*, 489 U.S. at 55.

II. CONCLUSION

Petitioner Timothy Walton respectfully requests that the Court issue the writ of certiorari pursuant to 28 U.S.C. § 1257 to review the final judgment or decree in this matter.

Respectfully submitted,

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